

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 09-CR-0025

FRANCIS H. NAHWAHQUAW,

Defendant.

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**ORDER DENYING MOTION TO DISMISS INDICTMENT**

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On January 21, 2009, a federal grand jury sitting in the Eastern District of Wisconsin returned a one-count indictment charging the defendant Francis H. Nahwahquaw with sexual abuse in violation of 18 U.S.C. §2242(1). Federal jurisdiction is predicated on the fact that the defendant is a Native American Indian and the offense is alleged to have occurred on the Menominee Indian Reservation. *See* 18 U.S.C. § 1153. Nahwahquaw filed a motion to dismiss the indictment pursuant to Fed. R. Crim. P. 12(b)(3) on the ground that §1153(a) of the Indian Major Crimes Act is void for vagueness. Specifically, he asserts that the term “Indian” in the Act is undefined and unconstitutionally vague.

As is the practice in this district, the pre-trial motion was referred to the assigned magistrate judge and the parties submitted briefs on the issue. On March 17, 2009, Magistrate Judge Patricia J. Gorence issued a recommendation that the motion be denied. The defendant has objected, essentially incorporating the arguments that he made before Magistrate Judge Gorence. Having reviewed the briefs submitted by the parties and the thorough decision accompanying Magistrate

Judge Gorence's decision, I hereby adopt the recommendation of the magistrate judge and order that the defendant's motion to dismiss be denied.

**SO ORDERED** this 28th day of April, 2009.

s/ William C. Griesbach  
William C. Griesbach  
United States District Judge